

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIDAMINES SPRL LTD., an)
Illinois corporation,)
)
Plaintiff,)
)
Case No. 18 C 1489
-vs-)
Chicago, Illinois
September 20, 2018
KBC BANK N.V., et al.,)
10:02 a.m.
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN J. THARP, JR.

APPEARANCES:

For the Plaintiff: LAW OFFICES OF HASSAN A. ABBAS
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For the Defendant: ORRICK, HERRINGTON & SUTCLIFFE LLP
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1 (Proceedings heard in open court:)

2 THE CLERK: 18 CV 1489, Midamines v. KBC.

3 Hi, this is Alberta. You've been conferenced into
4 Judge Tharp's courtroom for your case Midamines v. KBC, 18 CV
5 1489. Please hold for further instructions.

6 THE COURT: All right. Good morning. This is
7 Judge Tharp.

8 Who do we have on the line?

9 MR. ABBAS: Good morning. Good morning, Judge Tharp.
10 This is Hasan Abbas representing the plaintiff Midamines Sprl
11 Ltd.

12 MR. LEE: And this is Alvin Lee from Orrick,
13 Herrington & Sutcliffe representing the defendant KBC.

14 THE COURT: All right. We're here because the
15 plaintiffs filed two motions: a motion to amend the
16 complaint, docket 41; and a motion for clarification of the
17 Court's earlier ruling.

18 With respect to the motion to amend, I'm going to
19 deny that motion without prejudice. We're not going to be
20 addressing motions to amend the pleadings at this point until
21 I make threshold -- I address the motions that are already
22 pending, some of which raise threshold issues about whether
23 the case should be proceeding in this forum at all. Until I
24 have resolved those questions, we're not going to burden the
25 docket with motions about amending pleadings that, you know,

1 it may or may not ultimately be necessary to address.

2 I'll further note that there is no requirement that a
3 complaint set forth all of the legal theories that might
4 support recovery in a case in any event.

5 So as I understand it, the motion to amend seeks
6 simply to add a claim of breach of contract. Again, it's not
7 necessary to specify the particular legal theories on which
8 recovery might be warranted in a complaint. That doesn't mean
9 I will not -- if the case goes forward in this forum that I
10 would not be willing to entertain a further motion to amend
11 the complaint, but it's certainly not necessary to do that at
12 this point. So that motion is denied, again, without
13 prejudice.

14 The motion for clarification of the Court's earlier
15 ruling striking or denying the plaintiff's motions to strike
16 is granted, and I will provide this further clarification.

17 What I said and what I held was that the arguments on
18 which the motions to strike were based could be incorporated
19 into and should be incorporated into the response briefs due
20 from the plaintiff on July 19th. That is the -- I think the
21 clear import of the rulings I made; but to the extent there
22 was any confusion about that, I can't state it any more
23 clearly than that.

24 I think that's all that was up before us. Does any
25 party have anything else that needs to be addressed?

1 MR. LEE: Nothing from defendants, Your Honor.

2 THE COURT: Mr. Abbas?

3 MR. ABBAS: Well, Your Honor, you know, with respect
4 to the motion to amend, you know, another point is with
5 respect to the time, the issue of the statute of limitations
6 because, you know, part of the arguments relative to the
7 defendants' motion was the statute of limitations. And here
8 the breach of contract, because it carries a ten-year statute
9 of limitations, I believed it was necessary at this point to
10 amend. But I understand that --

11 THE COURT: Again, there's nothing that has precluded
12 or that precludes you from including that argument in response
13 to a motion to dismiss, but the complaint itself does not need
14 to be amended at this juncture to add a new legal theory.
15 That doesn't preclude you from arguing in response to a motion
16 to dismiss based on a statute of limitations argument that the
17 statute of limitations for breach of contract theory has not
18 run. The fact that that's not expressly made part of the
19 complaint is of no moment.

20 MR. ABBAS: Okay. I mean -- because I had not
21 addressed that issue in my response. In my initial response
22 to their motion, I had not addressed that issue.

23 THE COURT: Well, amending the complaint would not
24 address it either. If the -- if you fail to make an argument,
25 that's -- I will address the briefs as they are presented to

1 me, but amending the complaint at this juncture isn't going to
2 solve that problem.

3 MR. ABBAS: Okay.

4 Now, with respect to our pending motions to strike,
5 as I understood it, these motions would be considered as part
6 of our response is what I understood.

7 Now, in their -- defendants' reply, they indicated
8 and they also cited some case law that that was an improper
9 procedure to include such motions to strike within a motion
10 and response to a motion to dismiss. And that's why I wanted
11 to clarify that our motions to strike will be considered
12 because they're using judgments that are -- that cannot be
13 recognized. They're from Congo, and they're as a pretext for
14 the rest of our funds which they haven't returned for the past
15 six years; and also they're using affidavits with regard to a
16 provisional payment when there was a final payment that was
17 made to Illinois. You know, the KBC went into Midamines'
18 account in Illinois to extract the money without
19 authorization, and one of the affidavits indicates that, oh,
20 it was a provisional payment. That's why we went back in
21 there, back into the account in Illinois. That was a final
22 payment, and they came in like two weeks --

23 THE COURT: Mr. Abbas, I don't know what we're
24 discussing here right now. There are two motions up before
25 the Court --

1 MR. ABBAS: Well --

2 THE COURT: -- and I've ruled on the clarification
3 motion. The clear import of the order that I entered was that
4 the arguments that were asserted in your motions to strike
5 should be -- to the extent that you wish to make them should
6 be incorporated into the responses to be filed on July 19th.
7 That was either done or it wasn't done. What the defendant
8 says about the propriety of your argument is something I will
9 address; but to the extent you complied with the Court's order
10 and incorporated those arguments, the defense claim that that
11 was improper is not going to carry the day.

12 MR. ABBAS: And I had -- I believe I had incorporated
13 some responses that were stricken by the Court. So that was
14 another issue that I was not clear on, and I was wondering
15 about that also.

16 THE COURT: Well, Mr. Abbas, what I can tell you is
17 I'm going to take up the motions that have been filed and the
18 responses and the briefing on those questions as they are
19 presented. We're not going to be filing more motions. This
20 is yet another reason that we're not filing more motions at
21 this juncture. We've got more motions than I can keep track
22 of at this point already filed in this matter; and until I get
23 to them, which is taking longer than I would like because this
24 is not an -- this is not a situation uncommon to this case
25 where litigants continue to file motions before the Court ever

1 has to address the motions that have already been filed.

2 So I'm not considering the motion for leave to amend
3 the complaint at this juncture, and I have provided you the
4 clarification, the only clarification I can with respect to
5 the Court's prior ruling about your motions to strike.

6 And to repeat that again, I instructed you that the
7 arguments set forth in your motions to strike should be -- to
8 the extent that they are relevant should be asserted in your
9 response to the motions to dismiss. And whether you did that
10 or not or whether your arguments have merit or not, I have not
11 yet reviewed; and when I take those briefs up, I will make
12 those determinations.

13 Is there anything else?

14 MR. ABBAS: Thank you. Thank you, Your Honor. Thank
15 you. I appreciate it.

16 THE COURT: All right.

17 Mr. Lee?

18 MR. LEE: No, nothing from us, Your Honor.

19 THE COURT: All right. Thank you. I'll take the
20 motions up as quickly as I can.

21 We're adjourned.

22 MR. LEE: Thank you, Your Honor.

23 THE COURT: All right.

24 (Which were all the proceedings heard.)
25

CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/Kelly M. Fitzgerald

September 25, 2018

Kelly M. Fitzgerald
Official Court Reporter

Date